



California Regional Water Quality Control Board

Central Coast Region



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Protection

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Arnold Schwarzenegger
Governor

MINUTES OF REGULAR MEETING Friday, December 5, 2003 Regional Water Quality Control Board

Friday, December 5, 2003, 8:30 a.m.

Chairman Bruce Daniels called the meeting of the Central Coast Regional Water Quality Control Board to order at 8:35 a.m. on December 5, 2003, in the Regional Board Conference Room, 895 Aerovista Place – Suite 101, San Luis Obispo, California.

1. Roll Call.....Executive Assistant Carol Hewitt

Board Members Present:

Chairman Bruce Daniels
Vice Chair Jeffrey Young
Leslie Bowker
Russell Jeffries
Daniel Press
Gary Shallcross
Donald Villeneuve

2. IntroductionsExecutive Officer Roger Briggs

Executive Officer Roger Briggs introduced staff and asked all interested parties who wished to comment to fill out testimony cards and submit them. Mr. Briggs announced that Mr. Gary Carlton, State Board Liaison,

is unable to attend the meeting today. Mr. Briggs noted the following items for Supplemental Sheets and the Question and Answer document: Item Nos. 8, 9, 16, 17, 21, 23, 24, 25, and 27.

3. Approval of Minutes for October 23-24, 2003 MeetingBoard Motion

MOTION: Russell Jeffries moved to approve the October 23-24, 2003 minutes. **SECONDED** by Leslie Bowker. **CARRIED – Unanimously (7-0)**

4. Report by State Water Resources Control Board Liaison [Gary Carlton 916/341-5603]..... Status Report

No report.

4a. and 4b. Resolutions for John Hayashi and Marco Rizzo Resolution Nos. 2003-0173 and 0174

Chair Daniels announced that two Board members were leaving the Regional Board. He expressed his

appreciation for their service and presented Board members Marco Rizzo and John Hayashi with resolutions.

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5. Public Forum..... Board Direction

There were no speakers for the public forum.

6. Uncontested Items Calendar.....Board Motion

Executive Officer Briggs noted that Item Nos.11 (add), 12 (delete), and 23 (add). Item No. 24 was pulled for discussion.

MOTION: Gary Shallcross moved to approve the proposed consent calendar. SECONDED by Russell Jeffries. CARRIED – Unanimously (7-0)

7. Low Threat and General Discharge CasesInformation/Discussion/Board Approval

Executive Officer Briggs noted that updates were provided for discharges of winery waste. At this time we have about a 50% success rate for enrolling wineries into the program. Mr. Briggs reported good

news for the staff closed cases since the water quality objectives have been met and the cases are closed and he pointed out a State Board closed case.

8. Perchlorate Cases.....Status Reports

Senior Engineer, Harvey Packard, summarized the recent submittals by Olin including the Third Quarter Groundwater Monitoring Report, soil feasibility study, offsite flow assessment workplan, and onsite groundwater treatment system design report. Mr. Packard showed a map of the current perchlorate, including recent sampling showing the southernmost detections. Mr. Packard then described the onsite groundwater treatment system, which consists of three extraction wells on the southern boundary of the Olin property. The extracted water will be treated by ion exchange and discharged to a nearby retention pond via a storm drain. Staff enrolled Olin in the General Waiver of Waste Discharge Requirements for this discharge. Mr. Packard reviewed a letter recently submitted to the Regional Board from Stanley Williams, CEO of the Santa Clara Valley Water District (SCVWD). The letter included a list of elements that the SCVWD would like to see (or demands) in a cleanup order issued by the Regional Board to Olin. Mr. Packard also reviewed the Regional Board staff response letter. Mr. Packard reviewed upcoming meeting dates regarding the Olin case, including a meeting with Olin on December 9, a

meeting with the SCVWD on December 9, a meeting with Morgan Hill, Gilroy, and SCVWD on December 12, and the Perchlorate Community Advisory Group on December 12. Board Member Jeffery Young had a question regarding staff's November 18th letter, *Response to the 90% Design Report for Containment and Treatment of Perchlorate and Water*. Mr. Packard explained the A Zone is shown to have, from well pumping data, a seasonal perched aquifer, which could cause lateral spreading or off-site migration of infiltrating water. Mr. Young also requested a map of a cross-sectional view with groundwater data. Board Member Shallcross asked about the plume cleanup in the greater Morgan Hill/Gilroy area. He is concerned that current proposals do not address the full cleanup. Mr. Packard agreed that bottled water is only an interim solution and that the Board will require Olin to evaluate alternatives for long-term water replacement and aquifer cleanup. Mr. Packard concluded that all cleanup methods and beneficial uses must be analyzed, including a comparison of cost and effectiveness. Bioremediation of perchlorate was also discussed as a treatment option proposed by Olin. Board member Press requested Regional Board staff look into the

EPA's position on bioremediation of perchlorate. The possibility of issuing a cleanup or abatement order was discussed. The Board agreed that the Executive Officer should issue an order if, in his opinion, Olin was not

complying with staff requirements. The Board indicated that public review of a draft order would be preferable if time constraints allowed it.

9. MTBE Cases Status Reports

Santa Barbara County Fire staff, Ms. Kate Sulka and Tom Rejzek, provided an updated Region wide MTBE Listing and High Priority Sites list and answered specific site questions at the meeting. For the February 2004 Regional Board meeting, Santa Barbara County Fire agreed to follow-up and report to the Regional Board on the status of three MTBE cases that were not included on the December 4, 2003 list provided to the Regional Board: Budd of California in Guadalupe, and both the Junction Gas and Bird Cell service stations in Santa Barbara.

Regional Board staff noted that new legislative changes provided Santa Barbara County Fire and other Local Oversight UST Programs increased enforcement authority. Ms. Sulka of Santa Barbara County Fire indicated that additional enforcement authority is available through this legislation using the county's Administrative Order process. Ms. Sulka stated that county's internal procedures were currently in preparation and implementation of the process is over one year away.

10. Corrective Action Plan Approvals Status Report

This is a written report only.

18. Enforcement Report Status Report

Executive Officer Briggs reported that a Notice of Violation was issued and the responsibility party has resolved the issues at the 7-11 site. Board member Young asked about the comment on salts for the Mission Hills Community Services District.

Regional Board Staff Engineer, John Robertson, noted the comment was in reference to the discharger's request to raise the groundwater limits. Staff does not believe it would be appropriate to raise the limits.

(Chair Daniels announced a break at 10:00 a.m. The meeting reconvened at 10:14 a.m.)

24. Joseph Gallo Farms Feed Lot, Monterey County [Martin Fletcher 805/549-3694] Order No. 2003-0126

Regional Board staff engineer, Martin Fletcher, responded to questions and comments from the Board regarding groundwater monitoring requirements and nitrate concerns. Specifically, Board members discussed a Monterey County Water Resources Agency groundwater study that was believed to indicate the area east of the City of Gonzales as having high nitrate concentrations in groundwater. Mr. Fletcher reaffirmed staff's recommendation that groundwater monitoring not be required based on a estimated groundwater depth of 200 feet, the lack of elevated levels of nitrate in on-site supply wells, and the Permit's requirement for development and

implementation of a comprehensive nutrient management plan to protect both groundwater and surface water. Carl Hooper with Bestor Engineers, Inc., addressed the Board on behalf of the Joseph Gallo Farms Feed Lot. He provided the Board with some basic history for the site. According to Mr. Hooper the feedlot is significantly smaller today than it was 20-30 years ago (60,000 cattle as compared to 30,000 permitted and 14,000 actual today), and smaller younger cattle are currently fed on the feedlot rather than large beef cattle. In lieu of establishing groundwater monitoring, Mr. Fletcher proposed additional soil monitoring in the confined animal pens.



Board members discussed the proposed additional soil monitoring and commented that some baseline information should be established and followed with regular monitoring similar to what is required of the crop/irrigation land. Board members also requested that staff report back to them at a future meeting

regarding the groundwater study discussed above and how it relates to the Joseph Gallo Farms Feed Lot, along with a rough history of the feedlot including acreage and number of animals over time. The Board approved the proposed permit with the discussed changes unanimously.

MOTION: Daniel Press moved to approve Order No. 2003-0126 to include changes discussed above. SECONDED by Gary Shallcross. CARRIED – Unanimously (7-0)

20. City of Arroyo Grande, San Luis Obispo County.....Order No. 2003-0103
[Bruce Paine 805/542-4782]

Chairman Daniels read an opening statement for a hearing and all interested parties were sworn in. Sanitary Engineering Associate, Bruce Paine, explained that the proposed liability was for violations of the state wide General Permit for the discharge of storm water from construction sites. Specifically, the City of Arroyo Grande failed to upgrade/amend, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) during the construction of Rancho Grande Park. Don Spagnolo, Public Works Director for the City presented arguments for withdrawing the complaint or reducing the amount of the liability. Mr. Spagnolo argued that the violations were the fault of their contractor, compliance was improved after the City got directly involved, impacts on receiving waters were not quantified, and steps had been taken to prevent similar non-compliance incidents in the future.

Executive Officer Briggs summarized by saying that such an Administrative Civil Liability complaint is usually an effective wake-up call. However, after hearing all the information from the hearing, and the City's expectation that the Board suspend not only the penalty but also credibility, the complaint amount was probably too low, and should have been higher. However, the recommended amount is \$25,000. Board members asked questions of staff, Board Counsel, and City Representatives. The Board discussed the facts pointing towards a higher culpability than what was recommended. Dr. Press pointed out that if the Board took the \$25,000 (staff recommendation) - \$8,250 (staff cost) x 3 (minimum number of violations per day of violation) + \$8,250 (staff cost), the result is \$58,500. The Board discussed other reasons and rationale for a higher culpability, including the City's continued negligence after repeated warnings and chances to correct, which justify at least \$58,500.

MOTION: Gary Shallcross moved to adopt Order No. 2003-0103 with the change to increase the fine from \$25,000 to \$60,000. SECONDED by Leslie Bowker. The Board discussed the motion.

AMENDMENT TO MOTION: Daniel Press proposed an Amendment to the motion. He recommended the following: Take the staff recommendation of \$25,000, subtract staff costs of \$8,250, multiply times three (minimum number of violations per day of violation), plus add back in the staff costs of \$8,250 for a total of \$58,500. Gary Shallcross accepted the Amendment as proposed, noting that there several other reasons discussed which support the increased penalty. SECONDED by Leslie Bowker. CARRIED – Unanimously – (7-0)

(Chair Daniels announced a break for lunch and the closed session meeting at 12:45 p.m. The meeting reconvened at 2:00 p.m.)

21. City of San Juan Bautista, San Benito County.....Order No. 2003-0141
[Matthew Keeling 805-549-3685]



Chair Daniels read an opening statement and all interested parties were sworn in. Discussion ensued as to whether a proposed Supplemental Environmental Project (SEP) consisted of measures that went above and beyond the obligation of the Discharger. Staff agreed that the proposed SEP fell within the gray area of this portion of the State Board's Water Quality Enforcement Policy criteria for an acceptable SEP. However, staff contended that the proposed project meets all other Enforcement Policy criteria and should

be considered. Legal staff stated that the proposed SEP was within the Enforcement Policy criteria and that its adoption should not create a precedent for future SEPs brought before the Board. The Mandatory Minimum Penalty was adopted as proposed for \$18,000 with a \$16,500 portion of the penalty to be expended on the proposed Salt Reduction Project SEP. Mr. Daniels stated for the record that he felt the proposed SEP was not appropriate.

MOTION: Daniel Press moved to adopt Order No. 2003-0141. SECONDED by Donald Villeneuve. CARRIED – (6-1) Note: Bruce Daniels voted no.

22. Butz Construction Inc., Almond Glen Estates, San Luis Obispo County.....Order No. 2003-0056
[Jennifer Bitting 805/549-3334]

Chair Daniels reported that Butz Construction Inc. waived the hearing.

MOTION: Daniel Press moved to adopt Order No. 2003-0056. SECONDED by Gary Shallcross. CARRIED – Unanimously (7-0)

25. Watershed Coordinator Position for Southern San Luis Obispo and Santa Barbara Counties... Board Action
[Julia Dyer 805/594-6144]

Julia Dyer, the nonpoint source staff member covering the Southern Watershed unit area, gave a presentation regarding the potential funding for a Watershed Coordinator component of the Guadalupe Fund blueprint. The Watershed Coordinator position will cover Southern San Luis Obispo and Santa Barbara Counties. This position is the cornerstone of the Guadalupe settlement fund blueprint. The watershed coordinator would assist agriculturist in meeting the requirements set forth by current and upcoming regulations for water quality. Support for this position from the Regional Board would come in the form of a monetary contribution issued through the Guadalupe Settlement Fund. The proposal requested that upon approval the funds allocated would represent 60% of the total budget over five years totaling approximately \$550,000.

Regional Board Member Daniel Press asked why rent for office space is included in the budget if the coordinator would be sharing an office with the Central Coast Wine Growers Association (CCWGA). Julia Dyer replied that the current rental space for the CCWGA is enough room for one person and to accommodate the Coordinator the CCWGA would need to lease additional space.

Dr. Press mentioned that the \$47,000 annual salary proposed might fall short of what is required to secure a position with a well-qualified candidate. Dr. Press suggested that the advertised position should offer a salary range up to \$60,000 based on education and other qualifications. In addition, Dr. Press recommended doubling the salary for the part time intern to secure strong support for the coordinator.

Julia Dyer responded that she was in favor of the idea. But, the Coalition might be uncomfortable with that proposal, as they do not want to over commit themselves financially.

Kevin Merrill of CCWGA said they support the recommendation and are in favor of increase the salary range to \$60,000. As the chair of the coalition and representative of the organization to house the coordinator Mr. Merrill reaffirmed the ongoing commitment to see this position through.

Jodi Issacs of the Dunes Center has been involved with the management plans. She very much encouraged the Regional Board to accept the staff's recommendation as there is a need for a go-to person for agriculture. The Dunes Center has been serving part of this role, but water quality is not their main focus.

Lon Fletcher of the Cachuma Resource Conservation District (RCD) spoke in favor of the coordinator

position, as it would compliment the work performed by the RCD.

MOTION: Daniel Press moved to approve the Watershed Coordinator position with the conditions that the salary range be raised to \$60,000, the benefits package would reflect the increase, and that the part-time intern would receive double the recommended salary. **SECONDED** by Donald Villeneuve. **CARRIED – Unanimously (6-0)** *Note: Board Member Young was not present for this vote.*

26. Reports by Regional Board Members Status Report

Board Member Bowker addressed the issue of annual fees for waste discharges under Section 13260 of the California Water Code. Mr. Bowker was contacted by a small discharger in Los Osos who pointed out an inequity in his fee. Upon researching the issue, Mr. Bowker found that there are inequities in the fees for the small dischargers. Executive Officer Briggs noted that the fee schedule does have increased fees. Brad Hagemann discussed fees for waste dischargers and noted that the increased fees are intended to offset the General Fund cuts that occurred and to cover the staffing costs to run the regulatory program. We are looking at options for accomplishing the goals of waste discharge requirements, i.e., by enforcement order or a conditional waiver, in lieu of waste discharge requirements. Sorrel Marks noted that the fees are

based on the average staff time and expenses associated with implementing the permitting program. The individual fees are based on the complexity of the system and the threat to water quality. Board Member Bowker is still concerned that a family pays a different rate depending upon where they live even though their amount of discharge and threat is exactly the same. Sorrel Marks noted that the fee is not based specifically on flow or location, it is based on the permit holder. Chair Daniels suggested that staff draft a letter to the State Board about the fee inequities. Board member Young suggested that Assemblyman Maldonado receive a copy of the letter. Mr. Briggs said that staff will provide follow-up to the Board on the issue.

27. Executive Officer's Report..... Information/Discussion [Roger Briggs 805/549-3140]

Executive Officer Briggs noted the supplemental sheets that were distributed as follows. The Ocean Conservancy sent a letter regarding the regulation of timber harvest activities. A response letter is currently being drafted and a copy of the final letter will be made available to the Board. A supplemental sheet is provided on the status of the Kelegian and Pierson properties to update the Board on whether the sites involved agricultural or construction activities. Donette Dunaway reported that the Kelegian property has 40 head of cattle grazing on it and the Pierson property has no current use plan, however, a subdivision map is filed for the property. We expect to receive a written report by December 12, 2003 from the property owners.

Mr. Briggs said he had a question from a Board Member about the Tajiguas Landfill well locations. The groundwater map was made available to the Board for viewing. Michael LeBrun provided the Board an overview of well locations for groundwater

monitoring. Mark Schleich, Deputy Director of the Santa Barbara County Solid Waste and Utilities Division, responded to Board questions and explained the evolution of the monitoring program at the landfill. Board Member Young asked for assurance that pollutants were not reaching well #P-24 on the west side of the trench. Mr. Schleich noted that pollutants have never been detected at #P-24, but monitoring could be done. Bacteria testing was done above the landfill (SW-1) and below the landfill (SW-4). Hillary Hauser, Heal the Ocean, was concerned that the monitoring well plan does not emanate from an understanding of where the groundwater is going. She asked that the Board require the County to provide a scientifically accurate well monitoring program. Bob Hazard, Gaviota Coast Conservancy, raised concern about the area of the landfill that seems to be saturated above the bottom of the landfill. He is concerned about leachate finding flow paths and would like more information to be comfortable. Mr. Briggs noted that there is probably a misunderstanding of the purpose of



monitoring wells after reading a letter dated December 2, 2003 from Heal the Ocean. The letter refers to a curtain of monitoring wells connected by cones of depression. This would indicate use of a hydraulic containment system that requires 24-hour a day pumping. In reality monitoring wells are simply placed to get data points at representative spots.

Regional Board staff should have additional information on the Caltrans Administrative Civil Liability by the February 2004 Board meeting.

Grants update – we are tracking down wineries to make sure they get under the General Order umbrella.


Mr. Briggs announced that an Agricultural Workshop will be held on January 9, 2004 from 9:30 a.m. to 3:00 p.m. in Salinas.

The Governor sent Executive Order No. 2 that suspends all regulation policies. The new CalEPA Secretary stated that TMDLs are exempt from the Executive Order.

The Regional Board has created a new organizational chart due to the loss of staff, budget cuts, and staff requests for professional development, which prompted granting some requests for rotational assignments as part of the staff reorganization.

Chair Daniels adjourned the public meeting at 4:00 p.m.

The meeting was audio recorded and the minutes were reviewed by management, and approved by the Board at its February 6, 2003 meeting in San Luis Obispo, California.



Bruce Daniels, Chair

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